

Message Text

PAGE 01 USUN N 03934 110144Z

67

ACTION IO-03

INFO OCT-01 ISO-00 AF-04 ARA-10 EA-07 EUR-10 NEA-06 RSC-01

CIAE-00 DODE-00 PM-03 H-01 INR-10 L-02 NSAE-00 NSC-07

PA-01 PRS-01 SP-02 SS-14 USIA-04 FRB-01 OMB-01 TAR-01

SWF-01 AGR-03 AID-05 COME-00 EB-03 LAB-01 OIC-01

SIL-01 STR-01 TRSE-00 CIEP-01 CEA-01 DRC-01 /109 W

----- 081603

P R 110001Z OCT 74

FM USMISSION USUN NY

TO SECSTATE WASHDC PRIORITY 6232

INFO AMEMBASSY NEW DELHI PRIORITY

USMISSION GENEVA

USMISSION OECD PARIS

USMISSION EC BRUSSELS

AMEMBASSY MEXICO CITY

UNCLAS USUN 3934

TREASURY PASS BRADIFELD

E.O. 11652: N/A

TAGS: EGEN, UNCTAD

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES (CERDS)

1. CERDS PARA 2(PERMANENT SOVEREIGNTY, NATIONALIZATION, ET AL) SUBGROUP (SG) MET THURSDAY MORNING UNDER MULIRO (KENYA)) CHAIRMANSHIP.

2. MULIRO REQUESTED ALL PARTIES ATTEMPT SERIOUS EFFORTS AT COMPROMISE. NOTED SG HAD TWO DOCUMENTS BEFORE IT:
(A) UNCATD TDB OFFICIAL DOCUMENT, TD/B/AC.12/4; AND
(B) INFORMAL DOCUMENT PREPARED BY UN SECRETARIAT TO ASSIST WORK OF GROUP. LATTER DOCUMENT (POUCHED TO L-JULIA WILLIS) REFLECTS INFORMAL AGREEMENTS REACHED EARLIER THIS YEAR IN GENEVA BY INFORMAL GROUP OF 13. MULIRO UNCLASSIFIED

PAGE 02 USUN N 03934 110144Z

SUGGESTED SG USE THIS DOCUMENT AS BASIS OF WORK. NO DELS OBJECTED.

3. ACCORDINGLY MULIRO OFFERED FOR CONSIDERATION

PARA 2(1) OF SYG TEXT; NAMELY;

"EVERY STATE HAS PERMANENT SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES AND HAS THE INALIENABLE RIGHT FULLY AND FREELY TO DISPOSE OF THEM."

4. EGYPT PROPOSED FOLLOWING MODIFICATIONS: (A) INSERT "FULL" BETWEEN "HAS" AND "PERMANENT SOVEREIGNTY"; (B) INSERT "ALL" BETWEEN "OVER" AND "ITS"; AND, (C) REPLACE "NATURAL WEALTH AND RESOURCES" BY "ITS WEALTH AND NATURAL RESOURCES".

5. USDEL REMINDED SG THAT US ACCEPTANCE AT GENEVA OF VARIOUS PROVISIONS OF PARA 2, INCLUDING THIS SENTENCE, WAS CONTINGENT ON DEVELOPMENT OF A PARA 2 ACCEPTABLE IN ITS ENTIRETY. PASSING TO EGYPT PROPOSALS, USDEL NOTED "FULL AND "ALL" WERE REDUNDANT, NOT CONSISTENT WITH UN TREATMENT OF SUBJECT (I.3. UNGA RES 1803), AND AS UKDEL POINTED OUT, THESE TERMS INVOLVED STEP BACKWARDS FROM GENEVA AGREEMENTS. AS TO "ITS WEALTH AND NATURAL RESOURCES" USDEL THOUGHT THE ISSUE ALSO BURIED AT GENEVA. FURTHER MORE, IT MADE LITTLE SENSE FOR A STATE TO HAVE "PERMANENT SOVEREIGNTY" OVER MAN-MADE OBJECTS NO LONGER WITHIN ITS JURISDICTION.

6 ALGERIA SOUGHT TO EXPLAIN LATTER PART OF EGYPT PROPOSAL AS REFERRING TO WEALTH "WITHIN THE NATIONAL BOUNDARIES" OF A STATE". USDEL SUGGESTED THAT ISSUE WAS NOE CONCERNING JURISDICTION OF A STATE, AND NOT PERMANENT SOVEREIGNTY. INDIA, SYMPATHIZING WITH BOTH SIDES SUGGESTED FOLLOWING ALTERNATIVE TO PARA 2(1):

"EVERY STATE AS AND SHALL FREELY EXERCISE FULL PERMANENT SOVEREIGNTY OVER ITS WEALTH, NATURAL RESOURCES, AND ECONOMIC ACTIVITIES."

ALGERIA PROPOSED ADDITION OF PHRASE "WITHIN ITS NATIONAL JURISDICTION" AT END OF SENTENCE OF INDIA PROPOSAL.
UNCLASSIFIED

PAGE 03 USUN N 03934 110144Z

EGYPT PROPOSED ADDITION OF "ALL" AFTER "OVER". CHAIR (MULIRO) CONCLUDED THAT SG CONSIDER THERE ARE TWO TEXTS ON TABLE, THE GENEVA AGREEMENT AS REFLECTED IN SYG TEXT, AND THE INDIA PROPOSAL AS AMENDED BY EGYPT AND ALGERIA. FURTHER CONSIDERATION OF THIS PARA IS POSTPONED UNTIL AFTER REGIONAL CONSULTATIONS.

7. CHAIR PROCEEDED TO PARA 2(2)(A) OF SYG TEXT; NAMELY:

"TO REGULATE (AND CONTROL) FOREIGN INVESTMENT WITHIN ITS NATIONAL JURISDICTION IN ACCORDANCE WITH ITS LAWS AND REGULATIONS AND IN CONFORMITY WITH ITS DEVELOPMENT OBJECTIVES AND PRIORITIES;"

IN RESPONSE TO CHAIR, USDEL INDICATED US MAINTAINED ITS DESIRE FOR DELETION OF "AND CONTROL". MEXICO FIRST INSISTED ON RETENTION OF "AND CONTROL" BUT LATER SUGGESTED "AND EXERCISE AUTHORITY OVER" AS AN ALTERNATIVE. CANADA AND UK RESPONDED THAT NEW WORDING REPRESENTED AN IMPROVEMENT OVER PREVIOUS TEXT, AND STATED IT WOULD RECEIVE CONSIDERATION.

8 CHAIR PROCEEDED TO PARA 2(2)(B); NAMELY:

"(TO ENTER INTO INVESTMENT AGREEMENTS RELATING TO THE IMPORT OF FOREIGN CAPITAL, WHICH AGREEMENTS SHALL BE OBSERVED IN GOOD FAITH)"

9. YUGOSLAVIA, ON BEHALF OF G-77, OBJECTED TO THIS PARA AND PROPOSED DELETION. YUGOSLAVIA ARGUES THIS TEXT DEALT WITH STATE TO PRIVATE PARTY ISSUES, AND THE CHARTER WAS INTENDED TO DEAL WITH STATE TO STATE RIGHTS AND DUTIES. CHINA SUPPORTED VIEW, ADDING ISSUES REGARDING PRIVATE INVESTMENT ARE PROPER SUBJECT OF BILATERAL NOT MULTILATIONAL NEGOTIATIONS. USDEL RESPONDED THAT WHILE PARA CAN BE READ TO APPLY TO STATE-TO-PRIVATE ENTITY INVESTMENT AGREEMENTS, IT MAY ALSO BE READ AS REFERRING TO STATE-TO-STATE AGREEMENTS AND STATE-TO-INTERNATIONAL-ORGANIZATION AGREEMENTS. FURTHER THE CHARTER DEALS WITH NATIONALIZATION AND OBLIGATIONS OF MNCs. THUS IT IS INCORRECT TO SAY IT IS RESTRICTED TO STATE-TO-STATE-RIGHTS-AND OBLIGATIONS.
UNCLASSIFIED

PAGE 04 USUN N 03934 110144Z

USDEL NOTED INCLUSION OF SUCH A PROVISION VITAL TO CONSENSUS ON ARTICLE AS A WHOLE.

10. AUSTRALIA WAS PUZZLED THAT THIS PARA SHOULD GIVE ANY DELS DIFFICULTY. IT SOUGHT CLARIFICATION WHY ANY DEL SHOULD OBJECT TO PARA SAYING A STATE SHALL HAVE "RIGHT" TO ENTER INTO SUCH AGREEMENTS AND FULFILL THEM IN GOOD FAITH. WHILE YUGOSLAVIA STATED IT HAD NOT COMMENT ON LATTER AT THIS POINT, IT DID STATE THAT G-77 WERE AGREED THAT STATE AGREEMENTS WITH ANY ENTITY, PRIVATE OR ORTHOTHERWISE, SHOULD BE FULFILLED IN GOOD FAITH. FURTHER DISCUSSION POSTPONED.

11. CHAIR DEFERRED CONSIDERATION ON PARA 2(2)(C), SINCE THE TENTATIVE AGREEMENT REACHED ON THIS PARA AT GENEVA, CONTINGENT ON AGREEMENT ON PARAS 2(2)(B) AND 2(2)(D). USDEL RESERVED RIGHT, HOWEVER, TO REINTRODUCE PROVISIONS TO EFFECT THAT MNCs SHALL NOT BE OBJECTS OF DISCRIMINATORY OR ARBITRARY TREATMENT, IN EVENT THAT AGREEMENT NOT REACHED ON REMAINDER OF ARTICLE.

12. CHAIR PROCEEDED TO SYG TEXT PARA (2)(D) WHICH READS:

"TO NATIONALIZE, EXPORPRIATE OR REQUISITION
FOREIGN PROPERTY (PROVIDED THAT) (IN WHICH CASE)
(JUST) (APPROPRIATE) COMPENSATION (SHALL)
(SHOULD) BE PAID (BY THE STATE TAKING SUCH
MEASURES) (IN THE LIGHT OF ALL RELEVANT CIRCUM-
STANCES) (AFTER TAKING INTO ACCOUNT OF ALL
RELEVANT CIRCUMSTANCES)";

13. FRANCE STATED IT COULD NOT ACCEPT THIS PARA AS
DRAFTED AND WOULD REQUIRE REFERENCE TO "PROMPT, ADEQUATE
AND EFFECTIVE COMPENSATION". YUGOSLAVIA AND MEXICO
EXPRESSED SUPRISE THAT A POSITION SO LONG AGO REJECTED
WOULD BE INTRODUCED.

14. INDIAN PROPOSED FOLLOWING ALTERNATIVE:

"TO NATIONALIZE, EXPROPRIATE OR REQUISITION
FOREIGN PROPERTY IN WHICH CASE APPROPRIATE
UNCLASSIFIED

PAGE 05 USUN N 03934 110144Z

COMPENSATION SHOULD BE PAID IN ACCORDANCE WITH
ITS DOMESTIC LAW."

15. USDEL NOTED THAT THIS WAS A RESTATEMENT OF A FUNDA-
MENTALLY UNACCEPTABLE G-77 APPROACH. USDEL STATED THAT
WHILE WE WERE NOT LOCKED INTO ANY SPECIFIC LANGUAGE, TEXT
OF CERDS WOULD HAVE TO INDICATE A STATE'S DUTY TO
OBSERVE ITS INTERNATIONAL OBLIGATIONS, OR ELSE TEXT COULD
NOT BE ADOPTED BY CONSENSUS. USDEL ALSO REFERRED TO
INDIA'S CONSTITUTION WHICH PROVIDES FOR RESPECT FOR
INTERNATIONAL LAW AND TREATY OBLIGATIONS AND STATED WE
WOULD BE PLEASED IF CERDS CONTAINED SUCH LANGUAGE. IN
REPLY TO LATTER, INDIA STATED IT WAS PPRECISELY BECAUSE
ITS DOMESTIC LAW CONTAINED SUCH PROVISIONS THAT IT
BRLIEVED IT CORRECT THAT COMPENSATION SHOULD BE ACCORDING
TO DOMESTIC LAW.

16. CHAIR CONCLUDED MORNING SESSION BY URGING ALL TO
SEEK TO WORK FROM THE BASIS OF THE INFORMAL PROGRESS MADE
AT GENEVA.
SCALI

UNCLASSIFIED

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 27 JUL 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COMMITTEE MEETINGS, EXPLOITATION (NATURAL RESOURCES)
Control Number: n/a
Copy: SINGLE
Draft Date: 11 OCT 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974USUNN03934
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D740289-0175
From: USUN NY
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741092/abbrzang.tel
Line Count: 209
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ACTION IO
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: kellerpr
Review Comment: n/a
Review Content Flags:
Review Date: 11 MAR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 MAR 2002 by chappeld>; APPROVED <17 APR 2002 by kellerpr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CHARTER OF ECONOMIC RIGHTS AND DUTIES (CERDS)
TAGS: EGEN, UNCTAD
To: STATE INFO NEW DELHI
GENEVA
OECD PARIS
EC BRUSSELS
MEXICO CITY
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

